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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/924,100

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10/10/2007

EXAMINER

COLBERT, ELLA

ART UNIT

PAPER NUMBER

3694

NOTIFICATION DATE

DELIVERY MODE

10/10/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

# Office Action Summary

Application No.

09/924,100

Applicant(s)

BAKER ET AL.

Examiner

Ella Colbert

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4-8,11-15 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8, 11-15, and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 1, 4-8, 11-15, and 18-21 are pending in the communication filed 7/18/07 entered as Response After Non Final Action. Claim 8 has been amended in this communication.

2. The Objection to claim 8 is hereby withdrawn in view of Applicants' amendment to claim 8.

3. As a preliminary matter, the book entitled "Electronic Payment Systems" by Donald O'Mahony, Michael Peirce, and Hitesh Tewart, Artech House (1997) cited in Applicants' specification was not received even though Applicant states that the book was sent. Apparently, the book was lost in the mail. Please mail any books or prototypes to the following: Examiner Ella Colbert, The United States Patent Office, Knox Building, 501 Dulany Street, Fifth Floor, Room D 61, Alexandria, Virginia 22313-1450

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over (EP 0917327) Nikander alone.

Claim 1. Nikander discloses, A content vending machine for wireless delivery of content, comprising: a request receiver configured to wirelessly receive payment

information and a content request from a requestor (col. 3, [0010]-[0012]); and a request fulfiller, associated with said request receiver, configured to verify said payment information, retrieve content responsive to said content request and wirelessly transmit said content to said requestor (col. 3, [0013]-col. 4, line 9 and [0017] –col. 5, line 2 and [0022]-col. 6, line 7). Nikander did not expressly disclose a request fulfiller. However, Nikander did disclose a system for responding to requests (this is interpreted as a request fulfiller).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4- 7, 11-14, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over (EP 0917327) Nikander in view of (W0 01/57617 A2) Blackson et al, hereafter Blackson. Priority date 05 February 2000 (US 60/180,490).

Claims 4, 11, and 18, Nikander failed to disclose, wherein said requestor is a personal digital assistant. Blackson discloses, wherein said requestor is a personal digital assistant (Page 15, lines 9-13). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the requestor as a personal digital assistant and to modify in Nikander because such a modification would allow Nikander to have a more efficient way of communicating payment information.

Claims 5, 12, and 19, Nikander failed to disclose, content is selected from the group consisting of: computer data, audio data, and video data. Blackson discloses, wherein said content is selected from the group consisting of: computer data, audio data, and video data (Page 2, lines 1-23, Page 12, lines 19-22, Page 14, lines 1-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the content selected from the group consisting of computer data, audio data, and video data and to modify in Nikander because such a modification would allow Nikander to have another means of the efficient selection of content for payment information.

Claims 6, 13, and 20, Nikander failed to disclose, request fulfiller comprises a Bluetooth-compliant transmitter configured to wirelessly transmit said content to said requestor. Blackson discloses, wherein said request fulfiller comprises a Bluetooth-compliant transmitter configured to wirelessly transmit said content to said requestor (Page 15, lines 3-9 (Bluetooth)). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the request fulfiller to comprise a bluetooth-compliant transmitter for wireless transmission of the content to a requester and to modify in Nikander because such a modification would allow Nikander to wirelessly tap into an already existing Internet connection and to use a phone as a wireless modem for a laptop to transmit content.

Claims 7, 14, and 21, Nikander failed to disclose, wherein said content vending machine is coupled to a communications network. However, Nikander does have a network which could be used to couple a content vending machine to since it acts as a

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communications network. Blackson discloses wherein said content vending machine is coupled to a communications network (Page 6, lines 6-16 and line 22 –Page 7, line 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a content vending machine coupled to a communication network and to modify in Nikander because such a modification would allow Nikander to have a faster and more efficient way to receive content.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over (W0 01/57617 A2) Blackson et al, hereafter Blackson. Priority date 05 February 2000 (US 60/180,490) and (EP 0917327) Nikander.

Claim 8. Blackson further discloses, A method for wirelessly delivering content, comprising: verifying said payment information by a request fulfiller, associated with said request receiver, of said content vending machine (Page 11, lines 3-26).

This independent claim is rejected for the similar rationale as given above for claim 1.

Claim 15. Blackson discloses, An information delivery system for wireless delivery of content over a communications network, comprising: a content reservoir coupled to said communications network that stores content (Page 11, lines 12-26); and a content vending machine, coupled to said content reservoir, including: a request receiver that

receives payment information and a content request from a requestor (Page 9, lines 11-28 and Page 11, line 27 –Page 12, line 22). This independent claim is rejected for the similar rationale as given above for claims 1 and 8.

*Although the Examiner has pointed out particular references contained in the prior art(s) of record in the body of this action, the specified citations are merely representative of the teachings in the art as applied to the specific limitations within the individual claim. Since other passages and figures may apply to the claimed invention as well, it is respectfully requested that the applicant, in preparing the response, to consider fully the entire references as potentially teaching all of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the Examiner.*

### **Response to Arguments**

10. Applicant's arguments filed 7/18/07 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' argue: The Applicants' respectfully disagree since Nikander does not teach or suggest retrieving content responsive to a content request and wirelessly transmitting the content to a requestor as recited in independent claim 1, wirelessly transmitting a requested serviced or merchandise to a requestor, or how it is even possible to wirelessly transmit merchandise has been considered but is not persuasive. Response: Nikander is interpreted as transmitting wirelessly a requested service to a requestor on page 3, col. 3 [0010]-[0013], col. 4 [0017] –page 4, col. 5 [0022]. When the word "or" is in a claim limitation, the reference only has to show one

of the elements and not both elements in the claim limitation. An "or" in a claim is the same as "either".

Issue no. 2: Applicants' argue: the cited combination of Nikander and Blackson does not establish a prima facie case of obviousness of independent claims 1, 8, and 15 and claims that depend thereon and Blackson does not teach or suggest wirelessly receiving a content request or payment information has been considered but is not persuasive. Response: It is unclear from Applicants' argument why Applicants' do not consider Nikander and Blackson to establish a prima facie case of obviousness as argued. Blackson discloses the requestor is a personal digital assistant on page 15, lines 9-12 and Blackson does teach on page 15, lines 3-9 a Bluetooth requestor which is wireless. Therefore it is interpreted that Blackson does teach the claim limitations of claims 4-8, 11-15, and 18-21. Thus the prior rejections are sustained.

Conclusion: It is assumed that every reference relies to some extent on the knowledge of persons skilled in the art to complement that which is disclosed therein. Further, the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied reference/references. In other words, the person having ordinary skill in the art has a level of knowledge apart from the content of the references. *In re Bode*, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977); *In re Jacoby*, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). A conclusion of obviousness is established "from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference." *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). Also



see MPEP 2144 entitled "Sources of Rationale Supporting a Rejection Under 35 U.S.C. 103: RATIONALE MAY BE IN A REFERENCE, OR REASONED FROM COMMON KNOWLEDGE IN THE ART, SCIENTIFIC PRINCIPLES, ART – RECOGNIZED EQUIVALENTS, OR LEGAL PRECEDENT."

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner is entitled to give limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

*During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).<*

Applicants' are respectfully requested to point out in the claim(s) and claim language the inventive concept of what is considered to be the invention.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


#### **Inquiries**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 24, 2007

  
ELLA COLBERT  
PRIMARY EXAMINER